makes it illegal to conduct the business in a certain manner, the officials of a corporation may be held without proof of knowledge, on the analogy of a similar principle in the law of agency, but no cases have been found which decree the punishment of corporation officials under such circumstances.[10]

On the question of the director's or officer's liability for nonfeasance, all of the very small number of cases on the subject save one stand for their exemption.[11] The one case[12] which considers the question at length declares flatly that a director cannot be criminally liable for mere neglect to act. This has been maintained whether the duty was apparently imposed directly on the officers or directors of the corporation,[13] as well as where it lay simply on the corporation.[14] A single New Jersey case,[15] however, in which the directors of a corporation were indicted for the death of a person alleged to have been caused by insufficient precaution at the crossing of a trolley line and a railroad, asserts that the directors may be liable for their negligent failure to perform a duty resting upon them. This is in accord with the simple principle of law which governs the situation. To hold a director or officer criminally liable for an omission, it is necessary only, as in the case of an ordinary individual, to show that there was a duty resting upon him and that he so negligently failed to perform it as to do a wrong to the public. In the majority of cases, assuming, of course, that the director is really in a position to direct the affairs of the corporation, it is no answer for him to say that the omission is only that of the corporation, since the duty rested on it alone. Just as the corporation is no shield in the case of his misfeasance, neither should it be in the case of his nonfeasance, because, as a corporation can act only through its agents, the directors and officers, its duties naturally become theirs. The mere fact that they are agents and that their principal also owes the duty, for the failure to perform which they have been indicted, is no defense.[16] By statute in a few instances they have expressly been made punishable for neglect.[17]

"NATURAL WANTS" AND INJUNCTIVE RELIEF IN THE LAW OF RIPARIAN RIGHTS.—The common law rights of riparian owners are undoubtedly usufructuary in their nature and not absolute, and are accordingly limited by the correllative rights of other riparian proprietors.[1] So that any use of a stream by a riparian owner inflicting sensible dam-

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[10]*Cf.* Crall *v.* Comw. *supra,* where participation by the officers in the statutory offense of the corporation was held necessary.

[11]Comw. *v.* Demuth (Pa. 1825) 12 Serg. & Rawle 389; State *v.* Barksdale (Tenn. 1844) 5 Humph. 154.

[12]People *v.* Clark (1891) 8 N. Y. Crim. Rep. 179.

[13]Queen *v.* Pocock (1851) 17 Q. B. 34.

[14]Rex *v.* Hays (1907) 14 Ont. L. R. 201, 207.

[15]State *v.* Young (N. J. 1903) 56 Atl. 471.

[16]Regina *v.* Haines (1847) 2 C. & K. 367; State *v.* O'Brien (1867) 3 N. J. L. 169. *Cf.* Regina *v.* Smith (1869) 11 Cox C. C. 210 where the servant was not held for neglect because no duty rested on his master.

[17]Kane *v.* People (N. Y. 1829) 3 Wend. 363; Cowley *v.* People (1881) 89 N. Y. 464, 469.

[1]Hough *v.* Doylestown (Pa. 1870) 4 Brewst. 333.

age upon another such owner is actionable.[2] Obviously, this rule is based upon the fundamental principle underlying all natural rights, *sic utere tuo ut alienum non laedas.* As an exception to this rule, it was early declared *obiter* that an absolute right existed in the reasonable use of the water itself for natural wants and for cattle, without regard to the effect which such use might have, in case of a deficiency, upon lower riparian proprietors.[3] This exception, though approved by text writers,[4] and in numerous judicial *dicta,*[5] is supported by few decisions.[6] On the other hand, its validity has been questioned in England,[7] and has several times been directly denied in the United States,[8] on the ground that it directly contradicts the usufructuary nature of riparian rights in the water of a stream. From this exception it follows that domestic uses take precedence over all other uses.[9] The only apparent reason for the exception is policy: that it is better to save the life and strength of one than to leave all alike to perish by dividing the supply.[10] It seems, therefore, rather a rule of expediency than of justice since it gives an upper riparian owner an additional right because of his superior location, and is, at best, adapted only to primitive communities. Moreover, the vice of the exception lies in the extent to which the courts may apply it, for results may logically be attained disproportionate and foreign to the reasons in which the rule originated. Thus, under certain circumstances, irrigation is deemed a natural want.[11] Further, a lunatic asylum situated on a stream may take sufficient water for the domestic wants of its nine hundred inmates although material damage to another riparian owner is thereby caused,[12] and it has even been intimated that a city may take as much water as is necessary for the domestic wants of its inhabitants, without being liable for the resulting insufficiency of water for navigation.[13] Such results would seem to constitute a taking of property from lower riparian proprietors without compensation and to attain a result directly contrary to all the principles of riparian rights. In view of the scant authority in its

[2]Embrey *v.* Owen (1851) 6 Ex. 353.

[3]Miner *v.* Gilmour (1858) 12 Moore P. C. 131, 156.

[4]Gould, Waters § 205; Farnham, Waters 1580; Yool, Waste, Nuisance and Trespass 125; Gale, Easments 219-20.

[5]Nuttall *v.* Bracewell (1866) L. R. 2 Ex. 1; Lord Norbury *v.* Kitchin (1862) 3 F. & F. 292; Evans *v.* Merriweather (1842) 4 Ill. 492; Stein *v.* Burden (1856) 29 Ala. 127; Anderson *v.* Cincinnati So. Ry. Co. (1887) 86 Ky. 45; Arnold *v.* Foote (N. Y. 1834) 12 Wend. 330; Rhodes *v.* Whitehead (1863) 27 Tex. 304; Penn. R. R. Co. *v.* Miller (1886) 112 Pa. St. 34; Barre Water Co. *v.* Carnes (1893) 65 Vt. 626; Smith *v.* Corbit (1897) 116 Cal. 587.

[6]Filbert *v.* Dechert (1903) 22 Pa. Sup. Ct. 362; Slack *v.* Marsh (Pa. 1875) 11 Phila. 543; Spence *v.* McDonough (1889) 77 Ia. 460.

[7]Lord Norbury *v.* Kitchin (1863) 9 Jur. [N. s.] 132; Angell, Waters § 129.

[8]Hough *v.* Doylestown *supra;* Chatfield *v.* Wilson (1858) 31 Vt. 358; Lawrie *v.* Silsby (1903) 76 Vt. 240.

[9]Evans *v.* Merriweather *supra.*

[10]Farnham, Waters 1580. It is notable that policy has led to a contrary result in the case of public service corporations, although the analogy is not complete. 9 COLUMBIA LAW REVIEW 619.

[11]Rhodes *v.* Whitehead *supra.*

[12]Filbert *v.* Dechert *supra.*

[13]City of Phila. *v.* Collins (1871) 68 Pa. St. 123.

support and of the decisions directly overruling it, its force as law is doubtful in jurisdictions adhering to the common law rule. Obviously, in states which have adopted the test of reasonable user such an exception finds no place, since reasonableness is not determined *per se*, but in the light of surrounding circumstances and the rights of other proprietors.[14] In a recent Vermont case, *Lawrie* v. *Silsby* (1909) 74 Atl. 94, the court, therefore, in denying injunctive relief, properly refused to regard interference by one riparian proprietor with the use of the water by another for domestic purposes unreasonable *per se*. The court had previously repudiated the doctrine of an absolute right in the water for domestic purposes.[15]

Ordinarily, for the infringement of riparian rights an injunction will issue as of course,[16] although such relief will be denied if it will not in fact grant substantial relief.[17] This certainly should be the result where there is damage or destruction of property, and balance of convenience would prevent injunctive relief only if the interference has been merely with comfortable enjoyment. This distinction is sometimes drawn where property rights are infringed by a nuisance.[18] The cases in which an injunction is denied although damage is proved are possibly reconcilable on this ground.[19] Apparently to avoid the issuance of an injunction as a matter of right, some courts have, in the public interest, conceded to a city the right to pollute a river with its sewage,[20] and to a mine owner the right to pollute a stream with mine water, [21] without liability, in law or equity, for the damage resulting to lower riparian proprietors. This, however, seems a judicial expropriation of property and is not looked on with favor by many courts.[22] In jurisdictions in which reasonable user is the test the primary question is the infringement of the plaintiff's right, for which infringement it would seem the plaintiff may secure an injunction. However, under this test the denial of injunctive relief may often be justified, since the balance of convenience, in a given case, is a potent factor in the determination of the plaintiff's right.

INCOMPATIBLE AND FORBIDDEN OFFICES.—In most states constitutional or statutory clauses declare that certain offices, called "forbidden," shall not be accepted by incumbents of other offices. Such provisions arise from obvious considerations of policy. For them to operate, the title to the office already held must be *de jure* and not simply *de facto*,[1] and the fact that a person is holding over and performing the duties of his office until his successor has qualified, does

[14]Pitts *v.* Lancaster Mills (Mass. 1847) 13 Metc. 156.

[15]Lawrie *v.* Silsby *supra.*

[16]Atty. Gen. *v.* Birmingham (1858) 4 K. & J. 528; Hennesy *v.* Carmony (1892) 50 N. J. Eq. 616; Pennington *v.* Brinsop Hall Coal Co. (1877) L. R. 5 Ch. Div. 769.

[17]Wood *v.* Sutcliffe (1851) 2 Sim. 162.

[18]6 COLUMBIA LAW REVIEW 458.

[19]Clifton Iron Co. *v.* Dye (1888) 87 Ala. 468; Straight *v.* Hover (Oh. 1909) 87 N. E. 174.

[20]City of Valparaiso *v.* Hagen (1899) 153 Ind. 337.

[21]Penn. Coal Co. *v.* Sanderson (1886) 113 Pa. St. 126.

[22]Straight *v.* Hover *supra.*

[1]People *v.* Turner (1862) 20 Cal. 143.